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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1934.

CLAIRE A. WARNER, Administratrix of the Estate of JOHN M. WARNER, Deceased,
Petitioner (Appellant Below),
vs.
EDWARD F. GOLTRA, Doing Business Under the Style and Name of THE GOLTRA BARGE LINE.

No. 870.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

PETITIONER'S REPLY BRIEF ON THE MERITS.

WALTER P. ARMSTRONG,
SAMUEL W. FORDYCE,
HENRY J. RICHARDSON,
C. POWELL FORDYCE,
Counsel for Petitioner.

FORDYCE, WHITE, MAYNE & WILLIAMS,
ARMSTRONG, McCADDEN & ALLEN,
Of Counsel.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CE ntral 4477.

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PETITIONER'S REPLY BRIEF ON THE MERITS.

In our original brief we pointed out that, by passing the Merchant Marine Act (Chapter 250, Sec. 33, 41 Stat. 1007, 46 U. S. C. A., Sec. 688) and the Longshoremen's and Harbor Workers' Compensation Act (Chapter 509, 44 Stat. 1424, 33 U. S. C. A. Supp., Secs. 901-950), Congress expressed its intent to grant new causes of action for the injury or death of all of those maritime employes over

whom it is given jurisdiction to legislate by Article III, Section 2 of the Constitution. Furthermore, we pointed out that this intent would be partially frustrated if the word "seaman," in section 33 of the former act, were construed so as to exclude the most important maritime employe, viz., the master.

In spite of these considerations the respondent, in his answer brief, strenuously opposes our contentions. Stripped to its essential elements, his argument is bottomed upon two propositions. First, that certain old cases exist which hold that for some purposes a master is not considered to be a seaman. Second, that other sections of Chapter 18, Title 46 of the United States Code—wherein, as section 688, is found section 33 of the Merchant Marine Act—show that Congress meant to differentiate between a master and a seaman. While these arguments have a superficial appeal, neither of them will stand critical analysis.

As to the first proposition: The cases of The Arina, 12 P. and D. 118; Connor v. Flora, 6 Can. Exch. 131, and Corbett v. Pearce, 2 K. B. L. T. Rep. (n. s.) 781, 20 T. L. R. 473 (Respondent's brief on merits, p. 21), are based upon the British Merchant's Shipping Act, which, unlike our own statute (U. S. C. A., Title 46, Sec. 713), expressly excludes a master from the definition of the word "seaman." For this reason alone, such cases cannot control. Furthermore, the most that can be said for the cases of M. Vandercook, 24 Fed. 472, and The Atlantic, 53 Fed. 607, cited

by the respondent on pages 21-22 of his brief, is that they indicate—although the point is not directly involved—that formerly, for some purposes, a master was not considered to be a seaman. But these authorities are not conclusive, for more recent American cases take an opposite view. (See Petitioner's brief on merits, pp. 28-34.)

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances in which it is used."

As to the respondent's second proposition: It is true that Section 33 of the Merchant Marine Act is now to be found in Chapter 18, Title 46 of the United States Code. And it is also true that certain sections thereof lend some support to the theory that a master is different from a seaman. However, it must not be forgotten that chapter 18, title 46, is purely an invention of those who compiled the Code—an arrangement or classification made solely for convenience of reference (Takao Ozawa v. U. S., 260 U. S. 178, 193; Buck Stove & Range Co. v. Vickers, 226 U. S. 205, 213). Compilers are not lawmakers (Paulson v. Hurlburt, 93 Ore. 419, 426; see, also, Sec. 2a, Act of June 30, 1926, Titles 1-4, U. S. C. A., p. 4, ch. 712, 44 Stat. at L. Pt. 1, 1). Neither the power to legislate nor the power to amend the laws can be delegated to them (State v. Gaunt, 13 Ore. 115, 116). Inclusion of an earlier statutory provision in

the Code does not operate as a re-enactment (Smiley v. Holm, 285 U. S. 355, 373). The mere accident that independent laws, passed at different sessions of the legislature, are collocated under one title or chapter in a Code, cannot be regarded as making them a part of one legislative scheme (Weatherly v. Capitol City Water Co., 115 Ala. 156, 171) — cannot change the original meaning, force, effect, scope or purpose which the lawmaking body intended them to have (State v. Gaunt, supra; Logan v. U. S., 144 U. S. 263, 302; Anderson v. Pacific Coast Steamship Co., 225 U. S. 187, 198, 199; Buck Stove & Range Co. v. Vickers, supra; Strottman v. Ry. Co., 211 Mo. 227, 257; Paddock v. Ry. Co., 155 Mo. 524, 536, and Sutherland on Statutory Construction, Vol. 2, p. 857)—cannot be permitted to operate to change the law and thereby defeat the will of Congress (Page v. Burnstine, 102 U. S. 664, 669). A statute neither gains nor loses force by the place it occupies in a collection of laws; its sanction depends upon its own terms, and would be the same as if it had been printed anywhere else in the Code (Paulson v. Hurlburt, supra; Ex parte Tillman, 84 S. C. 552, 558, and Pierce City v. Hentschel, Mo. Sup. Ct., 210 S. W. 31, 32, not officially published). The mere arrangement or location of a law by the revisors does not make it a part of the statutes with which it is grouped, so as to qualify its meaning. (See Aloe v. Ins. Co., 164 Mo. 675, Mo. Sup. Ct. en banc.)

It is our contention, therefore, that Section 33 of the

Merchant Marine Act neither gains nor loses force by the fact that it occurs in Chapter 18 of Title 46 of the United States Code. The other parts of that chapter cannot be used to qualify its meaning or to change it. To solve the problem presented in this case we must look to the original act. (See U. S. v. Hirsh, 100 U. S. 33, 35, and U. S. v. Lacher, 134 U. S. 624.) And if Congress in 1920, when it passed the Merchant Marine Act, intended the word "seaman" to include a master, this Court must give it that meaning in spite of section 713 and all of the other sections contained in chapter 18. That it did so intend is shown by the authorities cited in our original brief. Moreover, such intent is also indicated by the fact that section 33 amended, or rather supplanted, Section 20 of the La Follette Seaman's Act (Ch. 153, 38 Stat. 1185, 46 U. S. C. A., Sec. 688, note), in which the following words occurred, **"seamen having command."** Of themselves, these words imply that Congress considered that a person could have command and still be a seaman.

Finally, even if this Court should be of the opinion that the meaning of the word "seaman" in Section 33 of the Merchant Marine Act is not clear, we believe that the effect of this case will be so important, and so far reaching, that this Court is amply justified in resorting to the rule that the literal meaning of a word may be sacrificed in order that the legislative purpose may not fail (Takao Ozawa v. U. S., 260 U. S. 178, 194; Helvering v. N. Y. Trust Co.,

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No. 15, pp. 960, 963, and Sutherland on Statutory Constru
tion, Vol. 2, p. 712).

Respectfully submitted,

WALTER P. ARMSTRONG,
SAMUEL W. FORDYCE,
HENRY J. RICHARDSON,
C. POWELL FORDYCE,
Counsel for Petitioner.

FORDYCE, WHITE, MAYNE & WILLIAMS,
ARMSTRONG, McCADDEN & ALLEN,
Of Counsel.

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